

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CEMCO, LLC, a California limited liability  
company,

Plaintiff,

v.

KPSI INNOVATION, INC., a Delaware  
corporation; SERINA KLEIN, an individual;  
KEVIN KLEIN, an individual; and JAMES  
A. KLEIN, an individual,

Defendants.

CASE NO. 2:23-cv-00918-JLR

**STIPULATED PROTECTIVE ORDER**

**Note on Motion Calender:**  
March 12, 2024

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. CONFIDENTIAL MATERIAL

2 Confidential material shall include the following documents and tangible things produced  
 3 or otherwise exchanged: product designs, product development information, product  
 4 performance and testing data, competitive market information, business plans, present and  
 5 prospective customer and supplier information, contracts and business agreements, settlement  
 6 agreements, pricing information, and cost and profit information. Confidential material may be  
 7 designated “ATTORNEYS’ EYES ONLY” if it contains sensitive financial, technical, research  
 8 and development, business strategy, or competitive information that the designating party  
 9 believes in good faith could cause it to suffer competitive harm if known by the entities and  
 10 persons who would otherwise have access under this Order to confidential material that has been  
 11 designated “CONFIDENTIAL.”

12 3. SCOPE

13 The protections conferred by this agreement cover not only confidential material (as  
 14 defined above), but also (1) any information copied or extracted from confidential material; (2)  
 15 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
 16 conversations, or presentations by parties or their counsel that might reveal confidential material.

17 However, the protections conferred by this agreement do not cover information that is in  
 18 the public domain or becomes part of the public domain through trial or otherwise, or information  
 19 that is known to a receiving party on a non-confidential basis prior to its production.

20 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

21 4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
 22 or produced by another party or by a non-party in connection with this case only for prosecuting,  
 23 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
 24 the categories of persons and under the conditions described in this agreement. Confidential  
 25 material must be stored and maintained by a receiving party at a location and in a secure manner  
 26 that ensures that access is limited to the persons authorized under this agreement.

1           4.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the designating party, a receiving party may  
3 disclose any confidential material designated “CONFIDENTIAL” only to:

4                   (a)     the receiving party’s counsel of record in this action, as well as employees  
5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6                   (b)     the officers, directors, and employees (including in house counsel) of the  
7 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
8 agree that a particular document or material produced is for Attorney’s Eyes Only and is so  
9 designated;

10                  (c)     experts and consultants to whom disclosure is reasonably necessary for  
11 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
12 A);

13                   (d)     the court, court personnel, and court reporters and their staff;

14                   (e)     copy or imaging services retained by counsel to assist in the duplication  
15 of confidential material, provided that counsel for the party retaining the copy or imaging service  
16 instructs the service not to disclose any confidential material to third parties and to immediately  
17 return all originals and copies of any confidential material;

18                   (f)     during their depositions, witnesses in the action to whom disclosure is  
19 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
20 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
21 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
22 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
23 under this agreement;

24                   (g)     the author or recipient of a document containing the information or a  
25 custodian or other person who otherwise possessed or knew the information.  
26

1           4.3    Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items. Unless  
 2 otherwise ordered by the court or permitted in writing by the designating party, a receiving party  
 3 may disclose any confidential material designated “ATTORNEYS’ EYES ONLY” only to:

4                   (a)     the receiving party’s counsel of record in this action, as well as employees  
 5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6                   (b)     experts and consultants to whom disclosure is reasonably necessary for  
 7 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
 8 A);

9                   (c)     the court, court personnel, and court reporters and their staff;

10                  (d)     copy or imaging services retained by counsel to assist in the duplication  
 11 of confidential material, provided that counsel for the party retaining the copy or imaging service  
 12 instructs the service not to disclose any confidential material to third parties and to immediately  
 13 return all originals and copies of any confidential material;

14                  (e)     the author or recipient of a document containing the information or a  
 15 custodian or other person who otherwise possessed or knew the information.

16           4.4    Filing Confidential Material. Before filing confidential material or discussing or  
 17 referencing such material in court filings, the filing party shall confer with the designating party,  
 18 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
 19 remove the confidential designation, whether the document can be redacted, or whether a motion  
 20 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
 21 designating party must identify the basis for sealing the specific confidential information at issue,  
 22 and the filing party shall include this basis in its motion to seal, along with any objection to  
 23 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be  
 24 followed and the standards that will be applied when a party seeks permission from the court to  
 25 file material under seal. A party who seeks to maintain the confidentiality of its information must  
 26 satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion

1 to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in  
2 accordance with the strong presumption of public access to the Court's files.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
5 or non-party that designates information or items for protection under this agreement must take  
6 care to limit any such designation to specific material that qualifies under the appropriate  
7 standards. The designating party must designate for protection only those parts of material,  
8 documents, items, or oral or written communications that qualify, so that other portions of the  
9 material, documents, items, or communications for which protection is not warranted are not  
10 swept unjustifiably within the ambit of this agreement.

11 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
12 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
13 unnecessarily encumber or delay the case development process or to impose unnecessary  
14 expenses and burdens on other parties) expose the designating party to sanctions.

15 If it comes to a designating party's attention that information or items that it designated  
16 for protection do not qualify for protection, the designating party must promptly notify all other  
17 parties that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
19 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
20 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
21 be clearly so designated before or when the material is disclosed or produced.

22 (a) Information in documentary form: (*e.g.*, paper or electronic documents  
23 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
24 proceedings), the designating party must affix the word "CONFIDENTIAL" or "ATTORNEYS'  
25 EYES ONLY" to each page that contains confidential material. If only a portion or portions of  
26

1 the material on a page qualifies for protection, the producing party also must clearly identify the  
 2 protected portion(s) (e.g., by making appropriate markings in the margins).

3 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
 4 and any participating non-parties must identify on the record, during the deposition or other  
 5 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other  
 6 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after  
 7 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the  
 8 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
 9 confidential information at trial, the issue should be addressed during the pre-trial conference.

10 (c) Other tangible items: the producing party must affix in a prominent place  
 11 on the exterior of the container or containers in which the information or item is stored the words  
 12 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only a portion or portions of the  
 13 information or item warrant protection, the producing party, to the extent practicable, shall  
 14 identify the protected portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 16 designate qualified information or items does not, standing alone, waive the designating party’s  
 17 right to secure protection under this agreement for such material. Upon timely correction of a  
 18 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
 19 in accordance with the provisions of this agreement.

## 20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
 22 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
 23 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 24 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
 25 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 26 original designation is disclosed.

1           6.2    Meet and Confer. The parties must make every attempt to resolve any dispute  
 2 regarding confidential designations without court involvement. Any motion regarding  
 3 confidential designations or for a protective order must include a certification, in the motion or  
 4 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
 5 conference with other affected parties in an effort to resolve the dispute without court action. The  
 6 certification must list the date, manner, and participants to the conference. A good faith effort to  
 7 confer requires a face-to-face meeting or a telephone conference.

8           6.3    Judicial Intervention. If the parties cannot resolve a challenge without court  
 9 intervention, the designating party may file and serve a motion to retain confidentiality under  
 10 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
 11 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
 12 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
 13 other parties) may expose the challenging party to sanctions. All parties shall continue to  
 14 maintain the material in question as confidential and treat the material in question in accordance  
 15 with its CONFIDENTIAL or ATTORNEYS' EYES ONLY designation until the court rules on  
 16 the challenge.

17   7.       PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
 18 LITIGATION

19           If a party is served with a subpoena or a court order issued in other litigation that compels  
 20 disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
 21 "ATTORNEYS' EYES ONLY" that party must:

22               (a)     promptly notify the designating party in writing and include a copy of the  
 23 subpoena or court order;

24               (b)     promptly notify in writing the party who caused the subpoena or order to  
 25 issue in the other litigation that some or all of the material covered by the subpoena or order is  
 26 subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence,



1 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
2 work product, even if such materials contain confidential material.

3 The confidentiality obligations imposed by this agreement shall remain in effect until a  
4 designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

by

March 12, 2024

/s/ R. Joseph Trojan  
R. Joseph Trojan (*pro hac vice*)  
Dylan C. Dang (*pro hac vice*)  
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March 12, 2024

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March 12, 2024

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Attorneys for Defendants,  
KPSI INNOVATION, INC., et al.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
3 documents, electronically stored information (ESI) or information, whether inadvertent or  
4 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal  
5 or state proceeding, constitute a waiver by the producing party of any privilege applicable to  
6 those documents, including the attorney-client privilege, attorney work-product protection, or  
7 any other privilege or protection recognized by law. This Order shall be interpreted to provide  
8 the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b)  
9 do not apply. Nothing contained herein is intended to or shall serve to limit a party's right to  
10 conduct a review of documents, ESI or information (including metadata) for relevance,  
11 responsiveness and/or segregation of privileged and/or protected information before production.  
12 Information produced in discovery that is protected as privileged or work product shall be  
13 immediately returned to the producing party.

14  
15 DATED: March 13, 2024

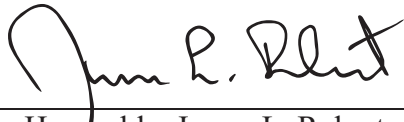
16  
17   
18 The Honorable James L. Robart  
19 UNITED STATES DISTRICT JUDGE  
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of  
perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued  
by the United States District Court for the Western District of Washington on [date] in the case of  
CEMCO, LLC v. KPSI INNOVATION, INC., et al. I agree to comply with and to be bound by all  
the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so  
comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise  
that I will not disclose in any manner any information or item that is subject to this Stipulated  
Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western  
District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order,  
even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I hereby certify that on March 12, 2024, I filed the foregoing Plaintiff's Supplemental Opposition To Defendants' Motion To Dismiss The Patent Infringement Claims Pursuant To Fed.R.Civ.P. 12(B)(6) with the Court's CM/ECF system, which will cause it to be served electronically upon all counsel of record.

/s/ R. Joseph Trojan  
R. Joseph Trojan (*pro hac vice*)